No. 82-1899

In the Supreme Court of the United States

OCTOBER TERM, 1983

TRANS WORLD AIRLINES, INC., APPELLANT

v.

NEW YORK STATE HUMAN RIGHTS APPEAL BOARD, ET AL.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

REX E. LEE
Solicitor General

J. PAUL MCGRATH
Assistant Attorney General

ROBERT S. GREENSPAN
MARK H. GALLANT
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether a New York statute prohibiting employment discrimination on the basis of pregnancy is preempted by the Federal Aviation Act of 1958, 49 U.S.C. (& Supp. V) 1301 *et seq.*, or invalid under the Commerce Clause to the extent that it applies to flight attendants employed by interstate air carriers.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued

Constitution, statutes and regulations:

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 82-1899

TRANS WORLD AIRLINES, INC., APPELLANT

v.

NEW YORK STATE HUMAN RIGHTS APPEAL BOARD, ET AL.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

The Human Rights Law of the State of New York makes it unlawful for an employer "to discriminate against any * * * individual in compensation or in terms, conditions or privileges of employment" on the basis of sex (N.Y. Exec. Law § 296.1 (McKinney 1982)). The statute encompasses discrimination based on pregnancy. See *Brooklyn Union Gas Co.* v. *New York State Human Rights Appeal Board*, 41 N.Y.2d 84, 359 N.E.2d 393, 390 N.Y.S. 884 (1976); *State Division of Human Rights* v. *City School District*, 75 A.D.2d 1009, 429 N.Y.S.2d 322 (1980). On De-

cember 14, 1973, appellee New York State Division of Human Rights (the State Division) issued a complaint charging appellant, Trans World Airlines, Inc. (TWA),[1] with violating Section 296.1 of the Human Rights Law by virtue of its policies of (1) compelling all female flight attendants to go on disability leave at the onset of pregnancy without regard to their ability to perform their duties, and (2) denying pregnant flight attendants the disability pay, insurance, and other benefits provided to other TWA employees on leave due to non-pregnancy-related disabilities. J.S. App. 1a-3a, 9a, 14a.[2]

After TWA unsuccessfully moved to dismiss the complaint on a variety of grounds, administrative hearings on the merits were held on various dates

---

[1] The Human Rights Law is applicable to employers residing, incorporated or authorized to do business within the State of New York and employing four or more persons within the State of New York (N.Y. Exec. Law §§ 292.5, 298-a (McKinney 1982)). The Human Rights Law reaches violations committed outside of the State of New York against New York residents by such employers, but potential sanctions in such cases vary significantly depending on whether the employer resides or is incorporated in New York, or is merely authorized to do business within the State. See N.Y. Exec. Law § 298-a(1) and (3) (McKinney 1982).

[2] The benefits issue is not before this Court. The Pregnancy Discrimination Act, 42 U.S.C. (Supp. V) 2000e(k), prohibits TWA from discriminating in the payment of benefits "on the basis of pregnancy, childbirth, or related medical conditions." TWA has advised the Court that it has altered its prior policies relating to benefits to bring itself into compliance with the Pregnancy Discrimination Act. See J.S. 6-7 n.4. Any issues relating to the payment of benefits for periods prior to passage of the Pregnancy Discrimination Act would be governed by this Court's decision in *Shaw* v. *Delta Air Lines, Inc.*, No. 81-1578 (June 24, 1983).

between November 24, 1975 and September 28, 1978 (J.S. App. 9a). At the hearings, TWA introduced medical opinion evidence to support its contention that placing flight attendants on leave status at the very onset of pregnancy and until term was reasonably necessary in view of applicable health and air safety considerations (J.S. 9-10). By stipulation of the parties, the State Division introduced into the record the medical testimony offered by Dr. Andre Hellegers in a similar case then pending before it, *Rosenfeld* v. *United Airlines, Inc.*, No. CS-32898-74 (J.S. App. 10a, 16a). Dr. Hellegers testified that a blanket mandatory leave policy for pregnant flight attendants was not medically justifiable (J.S. App. 15a).

The *Rosenfeld* case was decided before the first level of administrative proceedings was concluded in this case.[3] By recommended findings of fact, decision and order entered on May 23, 1979 (J.S. App. 8a-12a), the administrative law judge determined that TWA's policies violated Section 296.1 of the Human Rights Law and ordered TWA to implement, in their stead, the policies ordered by the New York State Human Rights Appeal Board in *Rosenfeld*. Under *Rosenfeld*, the airline (1) must permit pregnant flight attendants to work until their 20th week of pregnancy provided that, if requested to do so by the airline, the flight attendants obtain a semi-monthly medical authorization from their personal physician;

---

[3] *Rosenfeld* v. *United Airlines, Inc.*, No. CS-32898-74 (Sept. 10, 1975), aff'd, App. Nos. 3558 & 3065, confirmed *sub nom. United Air Lines, Inc.* v. *State Human Rights Appeal Board*, 61 A.D.2d 1010, 402 N.Y.S.2d 630, motion for leave to appeal denied, 44 N.Y.2d 648, cert. denied, 439 U.S. 982 (1978).

(2) may disqualify a flight attendant from further flight duty from the 20th to the 28th week of pregnancy should it perceive, on the basis of its own medical examination, a risk to the employee's health or to the safety of the passengers or crew; and (3) may disqualify a flight attendant from further duty in its discretion and without regard to the physical condition of the individual flight attendant during and after the 28th week of pregnancy (J.S. App. 11a). The administrative law judge rejected TWA's argument that application of the Human Rights Law to interstate air carriers was preempted by federal air safety laws, stating that the same constitutional claim previously had "been considered and rejected by the [New York] Courts" (*id.* at 10a) (citations omitted).

The findings and conclusions of the administrative law judge were reiterated and affirmed by the Commissioner of the State Division (J.S. App. 13a-18a). TWA then appealed the Commissioner's order to the New York State Human Rights Appeal Board. In addition to its preemption argument, TWA argued that the failure of the administrative decisions specifically to address TWA's medical evidence demonstrated that the result in the case had been "predetermined" and that TWA had been denied due process of law (J.S. 11). Employing a substantial evidence standard of review, the Appeal Board affirmed the Commissioner's decision on March 12, 1981 (J.S. App. 20a-21a). TWA then sought review in the Supreme Court of the State of New York, repeating its prior contentions and additionally arguing that application of the Human Rights Law to its flight attendants imposed an impermissible burden on interstate commerce (*id.* at 24a-29a). The Appeal Board's decision was confirmed by a unanimous

order of the Supreme Court of the State of New York (*id.* at 30a-31a), and TWA appealed to the Court of Appeals of the State of New York. That court dismissed TWA's appeal as of right on December 15, 1982, on "the ground that no substantial constitutional question is directly involved" (*id.* at 38a), and on February 23, 1983, it denied TWA's alternative motion for reargument or discretionary leave to appeal (*id.* at 46a).

DISCUSSION

Neither TWA's preemption claim nor its Commerce Clause claim presents a substantial constitutional question. The decision below does not conflict in fact or in principle with any decision of this Court or of any other court, and plenary review by this Court is not warranted.

1. TWA's principal contention (J.S. 12-23) is that the application to interstate air carriers of the sex discrimination provisions of New York's Human Rights Law is preempted by Congress's "occupation of the air safety field" through passage of the Federal Aviation Act of 1958, 49 U.S.C. (& Supp. V) 1301 *et seq.* Although Congress has indeed legislated extensively in the field of air safety, no federal interest is harmed or affected by the application of the anti-discrimination provisions of the Human Rights Law to interstate air carriers. We therefore agree with appellees that the Federal Aviation Act does not preempt state authority in this case.

a. The Court has recently noted that "[t]he goal of any pre-emption inquiry is 'to determine the congressional plan.'" *Rice* v. *Rehner*, No. 82-401 (July 1, 1983), slip op. 4-5, quoting *Pennsylvania* v. *Nelson*, 350 U.S. 497, 504 (1956). In making that inquiry,

" 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress' " (*Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977), quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). "This assumption provides assurance that 'the federal-state balance' will not be disturbed unintentionally by Congress or unnecessarily by the courts" (*Jones*, 430 U.S. at 525) (citation omitted).

Accordingly, it is well settled that " 'an unexpressed purpose to nullify * * * [state power] is not lightly to be attributed to Congress' " (*California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 103-104 (1980), quoting *Parker* v. *Brown*, 317 U.S. 341, 351 (1943)). "Pre-emption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained' " (*Chicago & N.W. Transp. Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981), quoting *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963)). And, where possible, "the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.' " *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware*, 414 U.S. 117, 127 (1973), quoting *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 357 (1963).

It is in light of these principles that we now show that the Federal Aviation Administration's authority to regulate air safety should not be taken to preempt the states' authority to ban pregnancy-related sex discrimination against flight attendants.

b. In this instance, the State of New York has not attempted direct regulation of air safety matters but, rather, has regulated in the field of employment discrimination—an area peculiarly adapted to local regulation [4]—in a manner that only indirectly implicates questions of air safety subject to regulation by the FAA. TWA correctly observes (J.S. 15 n.10) that a state cannot evade a preemption bar in an area extensively regulated by federal law through the simple expedient of "intrud[ing] indirectly" under a state law nominally regulating a different field. *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981). In this case, however, not only does the state law facially regulate local employment discrimination rather than air safety practices, but the requirements imposed by the state law are peripheral to the federal air safety regulatory scheme currently in effect and concern a subject matter that the FAA has thus far elected *not* to regulate.

Although TWA bases its preemption argument on the contention that questions involving air safety ultimately are subject to regulation by the FAA, it is constrained to acknowledge (J.S. 20-22) that the

---

[4] The identical anti-discrimination requirements TWA challenges in this case on the basis of the Supremacy Clause are also imposed as a matter of federal law by the Pregnancy Discrimination Act, 42 U.S.C. (Supp. V) 2000e(k). In recognition of the importance of state anti-discrimination laws to the enforcement of Title VII of the Civil Rights Act of 1964 (of which the Pregnancy Discrimination Act is now a part), Congress expressly preserved such state laws (42 U.S.C. 2000e-7, 2000h-4) and provided for enforcement at the state level in the first instance in those cases in which employment practices made unlawful by Title VII are also prohibited under state or local law (42 U.S.C. 2000e-5(c), (d), and (e)).

Human Rights Law results in a displacement of safety-related policies established *not* by the FAA, but by TWA itself. Other courts have found essentially the same distinction to be significant in cases involving FAA regulation. See *Air Line Pilots Association* v. *Trans World Airlines, Inc.*, 713 F.2d 940 (2d Cir. 1983) (FAA rule prohibiting persons over 60 from serving as pilots on commercial aircraft carrier cannot serve to justify the application of a similar rule to flight engineers whom the FAA has exempted from the "over-60" rule); *Tuohy* v. *Ford Motor Co.*, 675 F.2d 842 (6th Cir. 1982) (FAA's "over-60" rule does not support employer's application of a similar policy to company pilots not actually covered by the FAA rule).

The FAA does enjoy broad general authority to regulate matters affecting the safe conduct of air passenger carriage (see 49 U.S.C. 1421(b) and 1424). Pursuant to these powers, the FAA has established regulations specifying the minimum number of flight attendants required on each flight and has prescribed training requirements for flight attendants. 14 C.F.R. 121.391, 121.433. Yet none of these regulations imposes any specific physical qualifications, let alone conditions relating to pregnancy, for crew members serving as flight attendants.[5] The absence of preg-

---

[5] The absence of physical qualification requirements for flight attendants is not due to any lack of statutory authority. The Secretary of Transportation is authorized "to issue airman certificates specifying the capacity in which holders thereof are authorized to serve as airmen in connection with aircraft" and to condition the issuance and continuing validity of such certificates upon, inter alia, the physical condition of the certificate holders. 49 U.S.C. 1422. The Act defines the term "airman" broadly to include "any * * * member of the

nancy-related federal regulations is intentional. Since at least March 1974 the FAA's position has been that "a pregnant woman with no complications is in good health" and that "whether a flight attendant should fly when pregnant is a matter between herself, her doctor and her employer." App., *infra*, 3a. That policy was reaffirmed by the FAA's Federal Air Surgeon in February 1977 (*id.* at 6a).

Thus, although Congress has legislated extensively in the field of air safety, TWA has failed to show that Congress intended to preempt state anti-discrimination laws that are fully compatible with the federal regulatory scheme. The Human Rights Law might conceivably threaten interference with federal regulation of air safety if, at some future point, the FAA determined that it was necessary and appropriate to establish uniform physical or medical standards for flight attendants. But "at least so long as any power [the FAA] may have" over the physical qualifications required of flight attendants "remains 'dormant and unexercised' [the Human Rights Law] will not frustrate any part of the purpose of the federal legislation" and is not preempted (*Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.*, 372 U.S. 714, 724 (1963) (footnotes omitted), quoting *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U.S. 767, 775 (1947)).

2. TWA also argues (J.S. 23-27) that the application of New York's anti-discrimination laws to interstate air carriers imposes a constitutionally im-

---

crew, in the navigation of aircraft while underway" (49 U.S.C. 1301(7)). Nevertheless, the FAA has never sought to apply physical certification requirements to flight attendants, male or female.

permissible burden on interstate commerce. The argument is not persuasive.

"A state statute must be upheld if it 'regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental . . . unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Edgar* v. *Mite Corp.*, 457 U.S. 624, 640 (1982), quoting *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Where, as here, such a state law is challenged solely on the ground that an interstate carrier would be unduly burdened by simultaneously having to comply with incompatible state regulations, it is ordinarily incumbent on the carrier to identify "such competing or conflicting local regulations" in the first instance. *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. 440, 448 (1960). See also *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520, 527-528 (1959). In this case, TWA "has pointed to none," *Huron Portland Cement Co.*, 362 U.S. at 448, but instead argues only that the New York law should be invalidated under the Commerce Clause because there is a strong "potential" that other states will in the future enact conflicting anti-discrimination laws (J.S. 23-24). TWA's claim fails even under this theory.

Continental Air Lines advanced a similar claim in its challenge to a state employment law prohibiting racial discrimination in *Colorado Anti-Discrimination Commission* v. *Continental Air Lines, Inc.*, 372 U.S. 714 (1963). This Court, however, flatly rejected the argument that Continental's conduct of interstate air carriage could be burdened by the potential enactment of diverse state laws; the Court's own rulings forbidding racial discrimination effectively precluded

state laws affirmatively requiring such discrimination and made the "threat of diverse and conflicting [state] regulation of hiring practices * * * virtually nonexistent" (372 U.S. at 721). So too here, state laws prohibiting discrimination on the basis of pregnancy are unlikely ever to pose irreconcilable demands on TWA. In view of the Pregnancy Discrimination Act, 42 U.S.C. (Supp. V) 2000e(k), the likelihood of any state's enacting laws affirmatively prohibiting the employment of pregnant women is "virtually nonexistent." [6]

Although it is not inconceivable that the states might at some time impose varying restrictions on a carrier's right to ground flight attendants on the basis of pregnancy, the most probable variations would concern the period during which a carrier would be authorized (although not required) to place pregnant employees on disability status without making an individualized demonstration of need. To the extent that one state might prohibit a carrier from laying-off a pregnant employee in its sole discretion for a longer period than another state, the interstate carrier could satisfy the demands of both states simply by meeting the more stringent requirement.[7]

---

[6] Accordingly, TWA's hypothetical suggestion (J.S. 24) of the problems it could encounter in operating "a direct flight from New York to Los Angeles with intermediate stops in Philadelphia and Detroit" is legally impossible because, contrary to the facts posited in TWA's hypothetical, the State of Pennsylvania cannot lawfully prohibit flight attendants from flying after the 15th week of pregnancy, nor can the State of California lawfully prohibit pregnant flight attendants from flying at all.

[7] Turning again to TWA's hypothetical problems (J.S. 24), TWA could comply with both Michigan and New York law by allowing pregnant flight attendants to fly through the 30th

TWA's Commerce Clause claim is also undermined by the apparent absence of any intolerable burden on interstate commerce stemming from diverse rulings in pregnancy discrimination cases against interstate airlines under Title VII of the Civil Rights Act. As TWA acknowledges (J.S. 12-13 n.9), non-uniform rules for laying off pregnant flight attendants already have been adopted by different courts considering carrier lay-off practices under 42 U.S.C. (& Supp. V) 2000e. Compare, *e.g.*, *Harriss* v. *Pan American World Airways, Inc.*, 649 F.2d 670 (9th Cir. 1980) (accepting blanket policy of immediate lay-offs), with, *e.g.*, *Burwell* v. *Eastern Air Lines, Inc.*, 633 F.2d 361 (4th Cir. 1980) (en banc), cert. denied, 450 U.S. 965 (1981) (rejecting blanket policy of immediate lay-offs and adopting rules similar to those adopted in this case). It is difficult to comprehend how the adoption of diverse lay-off policies by state courts enforcing virtually identical local human rights laws would be any more burdensome than the diverse lay-off policies already adopted by federal courts enforcing Title VII.[8]

The fact that varying results in Title VII cases apparently have not imposed intolerable burdens on interstate air commerce belies TWA's contention (J.S.

---

week of pregnancy. Stated differently, New York law requires only that pregnant flight attendants be permitted to continue flying *at least* through the 27th week of pregnancy; it does not prohibit them from flying longer. Cf. *SEC* v. *National Securities, Inc.*, 393 U.S. 453, 463 (1969).

[8] Moreover, airlines have brought themselves into compliance with the varying court-ordered lay-off policies in precisely the manner we suggest—by complying with the most stringent requirement. See *Burwell*, 633 F.2d at 376-377 & n.4 (Butzner, J., concurring in part and dissenting in part).

24-27) that the burdens inherent in complying with diverse state laws would outweigh the states' interest in preventing discrimination against their citizens by employers incorporated, residing, or doing business within their boundaries. TWA's inability to demonstrate that New York's otherwise legitimate exercise of its police power is outweighed by the adverse impact of that exercise on interstate commerce defeats the Commerce Clause claim in and of itself. See *Raymond Motor Transportation, Inc.* v. *Rice*, 434 U.S. 429, 441 (1978); *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. at 443.

CONCLUSION

The judgment below should be affirmed.[9]

Respectfully submitted.

REX E. LEE
Solicitor General

J. PAUL MCGRATH
Assistant Attorney General

ROBERT S. GREENSPAN
MARK H. GALLANT
Attorneys

DECEMBER 1983

---

[9] As is the case under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(e), an employer is entitled under the New York Human Rights Law to prove that an otherwise prohibited discriminatory practice is justifiable as a bona fide occupational qualification reasonably necessary to the conduct of business. The United States expresses no view with respect to TWA's contention (J.S. 27-32) that it was effectively denied the opportunity in the proceedings below to present evidence to support the claim that its lay-off policy was reasonably necessary to the conduct of its business. But see Mot. to Dis. or Aff. 4.

APPENDIX

March 15, 1974

Hon. Alexander P. Butterfield
Administrator
Federal Aviation Administration
Washington, D.C. 20591

Dear Mr. Butterfield:

I am writing to you on a matter of mutual interest and concern to the Federal Aviation Administration and flight attendants.

As you probably know, there is a general policy maintained by scheduled and supplemental airlines requiring female flight attendants to discontinue flying and go on maternity leave upon knowledge of pregnancy. Recent interpretations of legislation prohibiting sex discrimination, including Title VII of the Civil Rights Act of 1964, and judicial decisions indicate that careful attention must be given at this time to reconsideration of this policy. I direct your particular attention to the decision of the United States Supreme Court in *La Fleur* v. *Board of Education*, which discusses considerations that the Court deemed relevant to a uniform requirement that employees must go on maternity leave when pregnant.

This subject raises issues as to health and air safety, and we would appreciate the cooperation of the Federal Aviation Administration in resolving these issues. We therefore request that this matter be given prompt and appropriate attention. We are ready to cooperate in this respect and would appreciate your response.

I would be happy to discuss these matters with you at your convenience.

Sincerely,

KELLY RUECK
President, Association of
Flight Attendants

KR/ps

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Washington, D.C. 20591

March 28, 1974

Ms. Kelly Rueck, President
Association of Flight Attendants
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Dear Ms. Rueck:

This is in reply to your March 15 letter concerning the general policy of some air carriers in requiring flight attendants to discontinue flying upon knowledge of pregnancy.

The Federal Aviation Administration has not set forth limits for crewmembers because of pregnancy. Basically, we feel that a pregnant woman with no complications is in good health. The consideration of whether a flight attendant should fly when pregnant is a matter between herself, her doctor and her employer. It must be remembered, however, that flight attendants when serving as a required crewmember should be able to perform all assigned tasks.

Sincerely,

/s/ C. A. McKay

C. A. MCKAY, Acting Assistant Chief
Flight Operations Division
Flight Standards Service

DEBEVOISE & LIBERMAN
700 Shoreham Building
806 15th St, N.W.
Washington, D.C. 20005

Telephone (202) 393-2080

December 28, 1976

H. L. Reighard, M.D.
Federal Air Surgeon
Federal Aviation Administration
Code AAM-1
Room 300E
800 Independence Avenue, S.W.
Washington, D. C. 20591

Dear Sir:

By letter of March 28, 1974, from Mr. C. A. McKay, the FAA briefly addressed the question of whether female flight attendants should be permitted to continue to work during the term of a pregnancy. This was in response to an inquiry from Miss Kelly Rueck, President, Association of Flight Attendants, to the Honorable Alexander P. Butterfield, Administrator, dated March 15, 1974. Copies of Miss Rueck's inquiry and the FAA's response are enclosed herewith.

As I understand Mr. McKay's letter, it was the FAA's position, taking into account both the requirements of aircraft operation and the duties of a required aircrew member during emergency situations, that pregnancy is not *per se* a medical disqualification for a required aircrew member. Rather, the ability of a pregnant woman to perform her duties—whether

"normal" duties or those related to the emergency evacuation of an aircraft—must be determined on an individual basis. The letter thus suggests that pregnancy is not *per se* a limiting condition which would disqualify a woman from serving as a flight attendant under 14 C.F.R. § 91.215(b), and that an airline's continued employment of female flight attendants while pregnant is not inconsistent with the carrier's responsibility for public safety under the Federal Aviation Act.

I request your advice as to whether Mr. McKay's letter remains an appropriate statement of the FAA's opinion regarding the ability of required aircrew members and flight attendants to continue flying during the term of a pregnancy.

I would appreciate your prompt attention to this request. If there are any aspects of the above which require clarification, please contact me at your earliest convenience.

Very truly yours,

/s/ Donald B. Meyers
DONALD B. MYERS

DBM/cgd

Enclosures

Feb. 2, 1977

Mr. Donald B. Myers
Debrevoise & Liberman
700 Shoreham Building
806 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Myers:

This is in reply to your letter of December 28 concerning the ability of aircrew members and flight attendants to continue flying during pregnancy.

As you point out, this matter was addressed in Mr. Kay's letter dated March 28, 1974. We have reviewed Mr. McKay's letter and can state that it remains an appropriate explanation of the agency's position regarding pregnancy and flying.

We reaffirm Mr. McKay's statements that the Federal Aviation Administration has not established limits for crewmembers because of pregnancy, and we feel that a pregnant woman with no complications is in good health. The consideration of whether a flight attendant should fly when pregnant continues to be a matter between herself, her doctor and her employer. When serving as a required crewmember, however, a flight attendant must be able to perform all assigned tasks.

We trust this answers your question, and if we may be of further assistance, please let us know.

Sincerely,

Original Signed By
H. L. Reighard, M.D.

H. L. REIGHARD, M.D.
Federal Air Surgeon, AAM-1

☆ U. S. GOVERNMENT PRINTING OFFICE: 1983 428674 193